



October 19, 2016

Senate Natural Resources Commission
Lansing, Michigan

Re: HB 5599 - Change in deductible amounts for program participation

Dear Board Members,

The Michigan Environmental Council continues to monitor the activities of the Underground Storage Tank Authority and the MDEQ's cleanup program to ensure that state funds are being used appropriately and the state is maximizing the cleanup of leaking underground storage tank sites and preventing the creation of new ones.

The Michigan Environmental Council has the following concerns with HB 5599 (S-2) and the working of the Underground Storage Tank Authority:

- 1) The Board of Directors of the Underground Storage Tank Authority has been discussing the issue of changing the deductibles for tank owners for two months and last month made a recommendation that the deductible amounts be lowered to \$5000 for those owning less than 8 tanks and \$15,000 for those owning more than 8 tanks. The board also recommended removal of the buy down provision. We oppose those provisions in (S-2) that lower the deductibles beyond that point to \$2000/\$10,000.
- 2) A lack of data supporting the recommendations. The Underground Storage Tank Authority has failed to demonstrate that the state in its implementation of this program is acting similar to an insurance company in setting program perimeters which in some way reflect the risks presented by different underground tanks and is not facilitating the use of stations which should be upgraded.

Assisting owners and operators in meeting their financial responsibility

When the program was established, decision makers were told that the insurance market offered sub-standard products and that there existed demand for an alternative mechanism. At this time, it appears that 9% of owners and operators representing approximately 25% of the tanks in Michigan are participating in the program. It has also been stated that some owners and operators (O/Os) may be waiting for current insurance policies to expire to switch to the state system.

What is unclear from the information presented is whether this is currently a problem.

This issue can be broken down into two separate issues:

- Are O/Os having trouble meeting their FR requirements?
- Are the mechanisms they are using to meet their FR requirements inadequate in some fashion in addressing releases once they are discovered?

Of the 17 parties that responded to the department survey and argued the deductibles were too high 7 were small O/Os and 6 were large O/Os (four do not appear on the release list). Not really sufficient information to base a decision on.

We also note that of the 17 parties that responded to the department survey and argued the deductibles were too high, 7 were not in compliance Part 213 reporting and thus may be ineligible for funding. A number of the other participants who answered the survey are in the program and are using the fund to address their release. At some level, this use of the program shows that some O/Os find the fund competitively prices versus the private market.

Deductible amounts

We remain concerned that the state is trying to act as an insurance company, but with insufficient information regarding the risks being covered and the potential exposure of the fund. We also think the proposed reduced deductibles fail to consider the role deductible play to encourage responsible practices by an O/O to prevent release.

The primary goal of this program as a whole should be to prevent releases, not just address them after they occur. We are also concerned that if Michigan provides tank FR mechanisms at cost below an amount which reflects the risk to natural resources, we may be encouraging the use of tank systems that present unreasonable risk to our natural resources

Although limited information exists on this critical issue outside the hands of private insurance companies, the report by ASTSWMO in October of 2015 titled "An Analysis of UST System Infrastructure in Select States" noted enough information existed to prompt 8 of the 38 States responding to require replacement of old UST equipment as follows:

CT: 30 years from date of installation system must be replaced.

FL: All single-walled USTs had to be upgraded to double-walled by 12/31/09.

IL: USTs with failed lining inspection must be upgraded.

NH: Single-walled USTs and piping must be closed by 12/22/15. All new tanks must be double-walled.

RI: Mandatory deadline for permanent closure of single-walled tanks.

SC: Single-walled systems must be closed by 12/22/18 if within 100' of a water supply or surface waters.

VT: Single-walled systems must be closed by 1/1/16, lined tanks removed 10 years after lining date.

WY: USTs with throughput >500,000 gal/month must be replaced when over 30 years old.

The report also noted that the majority of releases come from the connecting pipes, valves, etc, demonstrating the importance of having secondary containment in place for the entire tank envelope. In the future, the program should explore methods to facilitate the upgrading of substandard systems.

At this time we urge Senators to oppose HB 5599 (S-2) as presented.

Sincerely,
James Clift, Policy Director